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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 08/637,894 | 04/25/1996 | GEORGE TASH | P-2127-40 | 5079 |

7590 04/09/2003

LYON, HARR & DEFRAK
300 ESPLANADA DRIVE
SUITE 800
OXNARD, CA 93030

EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 08/637,894 | TASH, GEORGE |
| | Examiner Robert M. Fetsuga | Art Unit 3751 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 March 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4 and 6-17 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4, 6 and 9-17 is/are rejected.
- 7) Claim(s) 7 and 8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 April 1996 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 06 March 2003 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

| | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

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1. The proposed drawing correction filed on March 6, 2003 has been approved.
2. The drawings are objected to because the leader for reference numeral "35" appears misdirected in Fig. 2 (should be directed at element 32 as noted at pg. 8, lns. 8-12), and the cross-hatching is inaccurate as to material of the bellows 22 in Fig. 3. Correction is required.

Applicant is required to submit a proposed drawing correction in response to this Office action. Any proposal by applicant for amendment of the drawings to cure defects must consist of two parts:

- a) A separate letter to the draftsperson in accordance with MPEP 608.02(r); and
- b) A print or pen-and-ink sketch showing changes in red ink in accordance with MPEP 608.02(v).

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office action, and may not be deferred. The disclosure is objected to because of the following informalities: Page 5, line 19 and page 6, line 20, the

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descriptions of Fig. 4 are inaccurate. Also, Figs. 4a-4e lack a brief description.

Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10, 11, 13, 14, 16, 1, 2, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Scarella.

The Scarella reference discloses a plunger comprising: a handle 3; a bellows 5; and three ring-shaped seals 7 (and at 8), as claimed. Re claim 13, one of the seals is capable of being larger than an opening of a sink or drain depending upon the size of such opening which is not structurally recited in the claim. Further in this regard, note the English language

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translation at page 5, lines 21-23. Re claim 1, the seals are annular, curved and bulbous as illustrated. Re claim 2, it is well settled that process limitations in a product claim can not operate to distinguish a claimed product from a prior art product when the prior art product otherwise equates with the claimed product structure. Re claim 6, the bottom seal (at 8) includes a short vertical sidewall (between 8 and 9).

Applicant argues at pages 5-11 of the response the structures 7,8 are not seals as claimed. The examiner can not agree. Noting the translation of Scarella at page 5, line 19 through page 6, line 11, structures 7 and 8 indeed are seals.

5. Claims 12, 15, 17, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarella and Tash.

Although the Scarella plunger is not plastic, as claimed, attention is directed to the Tash reference which discloses an analogous plunger which further is plastic (col. 2 ln. 64 and col. 3. lns. 1-2). Therefore, in consideration of Tash, it would have been obvious to one of ordinary skill in the art to associate plastic with the Scarella plunger in order to utilize a commonly available, moldable material. Re claim 17, constructing the handle and bellows of a plunger as "unitary" is also taught to be desirable by Tash at column 2, lines 58-63.

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6. Claims 10-17, 1-4, 6 and 9 are provisionally rejected under 35 U.S.C. 103(a) as being unpatentable over Scarella and Tash as applied to claims 10-17, 1-4, 6 and 9 above, and further in view of Locke.

Although the ring seals of the Scarella plunger are not continuous, as disclosed, attention is directed to the Locke reference which discloses an analogous plunger which further includes continuous ring seals 12. Therefore, in consideration of Locke, it would have been obvious to one of ordinary skill in the art to associate continuity with the Scarella ring seals in order to facilitate drain engagement.

7. Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
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